

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

MAILED

APR 28 2006

U.S. PATENT AND TRADEMARK OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

*Ex parte* TRACY GLASER

Appeal No. 2006-0949  
Application No. 09/909,737

ON BRIEF

Before OWENS, GROSS, and NAPPI, *Administrative Patent Judges*.  
OWENS, *Administrative Patent Judge*.

*DECISION ON APPEAL*

This appeal is from a rejection of claims 23-27, 34-41, 50-60 and 73-78. The rejection of claims 34-41 is withdrawn in the examiner's answer (page 2). Claims 85-104 have been withdrawn from consideration by the examiner, and claims 1-22, 28-33, 42-49, 61-72 and 79-84 have been canceled.

*THE INVENTION*

The appellant claims an interactive computer based game for children. Claim 23 is illustrative:

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23. A computer based game for children including at least one scenario comprising:

- (a) said game obtaining the age for a first particular one of said children as a result of interaction with said game;
- (b) said game obtaining the age for a second particular one of said children as a result of interaction with said game; and
- (c) said game modifying said at least one scenario for said first and second child based upon said respective ages so that same game is different than it would have been if said game was free from said modification.

*THE REFERENCE*

Sloane et al. 5,813,863 Sep. 29, 1998  
(Sloane)

*THE REJECTION*

Claims 23-27, 50-60 and 73-78 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sloane.

The appellant states that the claims stand or fall in three groups: 1) claims 23-27, 2) claims 50-60, and 3) claims 73-78 (brief, page 5). We therefore limit our discussion of the claims in the first group, for which the rejection is affirmed, to the sole independent claim in that group, i.e., claim 23. See *In re Ochiai*, 71 F.3d 1565, 1566 n.2, 37 USPQ2d 1127, 1129 n.2 (Fed. Cir. 1995); 37 CFR § 1.192(c)(7)(1997).

*Claim 23*

Sloane discloses a computerized multimedia behavior modification system for promoting awareness and changing high-risk behaviors in areas of significant public health concern, such as AIDS (col. 2, lines 24-28). A tracking module (600) tracks a user's decisions and other characteristics as the user navigates the steps of a computer program (col. 5, lines 22-24; col. 6, lines 13-15). User-specific information gained from the tracking module is processed and used in administering the program to the immediate user (col. 5, lines 24-27; col. 6, lines 15-18). AIDS-related information is taught in the context of a first hand virtual experience wherein the user evaluates social situations along a decision tree through the ears and eyes of a virtual character (col. 7, lines 3-9). To increase the user's identification with the character and familiarity with the social and cultural surroundings, the target audience is researched for personal information such as age, gender, race, nationality, etc. before the system is installed (col. 7, lines 16-22 and 33-36). Each user can be prompted to input personal information to the tracking module (col. 7, lines 22-30).

The appellant argues that Sloane only obtains ages from the target audience, and does not obtain the age of the user by interaction with the game (brief, pages 8-9; reply brief, page 2). Sloane obtains "personal information" from the target audience, teaches that the personal information includes "age, gender, race nationality, etc.," and states that the user can be prompted to input "personal information" (col. 7, lines 16-25). Sloane does not indicate that the personal information requested from the target audience differs from that requested from the user. Hence, one of ordinary skill in the art would have considered the personal information requested from the user to include age.

The appellant argues that Sloane's specifically disclosed personal information requested from the user includes only race and gender (reply brief, page 2). The specifically disclosed personal information requested from the target audience includes race, gender, nationality and age (col. 7, lines 16-20). Thus, one of ordinary skill in the art would have considered the personal information requested from the user to include race, gender, nationality and age.

The appellant argues that there would be little reason for Sloane's system to obtain the age of the user through interaction

with the game, since the user's age is already assumed (brief, page 9). Obtaining the user's age through interaction with the system would provide the benefit of not needing to rely upon an assumed age.

The appellant argues that Sloane only discloses that the system's content may be modified after a particular, single user inputs personal information that pertains only to that single user, and that Sloane does not disclose obtaining the age of a second user as a result of interaction with the game and modifying at least one scenario for the first and second users based upon the respective ages (brief, page 10; reply brief, pages 2-3). Sloane's system can be used sequentially by users at a kiosk (col. 12, lines 11-14). The system obtains personal information from each user and modifies a scenario for each user accordingly (col. 7, lines 16-36). The appellant's claim 23 requires that first and second children play the same game, but does not require that they play the game together.

For the above reasons we are not convinced of reversible error in the rejection of claim 23. We therefore affirm the rejection of that claim and claims 24-27 that stand or fall therewith.

*Claims 50-60*

Claim 50, which is the only independent claim among claims 50-60, requires creating a psychological profile for a child and modifying at least one scenario for the child based upon the psychological profile.

The examiner argues that age and race are psychological characteristics (answer, page 5). "Psychological" means "**1 a:** of or relating to psychology **b:** MENTAL **2:** directed toward the will or toward the mind specif. in its conative function <~ warfare>".<sup>1,2</sup> Thus, age and race are not psychological characteristics. Accordingly, we reverse the rejection of claims 50-60.

*Claims 73-78*

Claim 73, which is the only independent claim among claims 73-78, requires that a game creates a set of data based upon interaction of a child with the game and forwards the data to at least one of a printing company, a printing and binding company, a video company, a toy company and a music company, and

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<sup>1</sup>Webster's New Collegiate Dictionary 931 (G. & C. Merriam, 1973).

<sup>2</sup>The appellant refers to age and gender as physical information (specification, page 7, lines 30-31).

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that a respective one of the companies provides, based upon the data, a greeting card from the printing company, a postcard from the printing company, a trading card from the printing company, a video from the video company, a toy from the toy company, and a compact disc from the music company.

The examiner argues that Sloane's data created based upon interaction of the user with the game is forwarded to make audiovisual subject matter (answer, page 6). Sloan's audiovisual subject matter is created by the program with which the user interacts. There is no forwarding of data from the user to a company or forwarding of audiovisual subject matter from the company to the user. Consequently, we reverse the rejection of claims 73-78.

#### *DECISION*

The rejection of claims 23-27, 50-60 and 73-78 under 35 U.S.C. § 102(b) over Sloane is affirmed as to claims 23-27 and reversed as to claims 50-60 and 73-78.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

**AFFIRMED-IN-PART**

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Administrative Patent Judge )  
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